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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Forty-seventh session
Agenda items 8 and 16 (a)

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS:

PREVENTION OF DISCRIMINATION AND PROTECTION OF CHILDREN: HUMAN RIGHTS AND YOUTH

Written statement submitted by the International League for the Rights and Liberation of Peoples, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[7 August 1995]

1. The Permanent Peoples' Tribunal, a parent body of The International League for the Rights and Liberation of Peoples is a forum for opinion. It was created for the promotion of the right of self-determination of peoples, and to fill, in the face of historical realities, lacunae of international law, and to stimulate the creation of substantive law in this field. The Tribunal held a session on "The violation of fundamental rights of children" in Italy from 27 March to 4 April 1995.

2. Children have continued to be victims of massacres in El Salvador, Guatemala and East Timor - wherever a policy of discrimination against minorities is implemented. It is children - in Zaire as in the Philippines - who once more become statistical indicators as to the extent to which the models of development based on corruption and dictatorship, albeit recognized and appreciated by the community of States, violate the fundamental rights of peoples.

3. It is children who die and are crippled by land-mines and toy bombs laid throughout Afghanistan. And it is again primarily the children who suffer the consequences of the United States interference in Nicaragua, where the guerrillas aimed directly at the destruction of education and primary health structures, and where the State's expenditure for the war takes up the entire social budget. In the mid-1980s the international scenario dramatically changed: it was the era of the debt crisis and of "structural adjustments". In the Berlin session (1988), on the policies of the International Monetary Fund and World Bank, it was noted that the role of children had changed. They no longer appear solely in the tragic reports of massacres or disappearances, but they also fill the statistics of the reports by international organizations as a measure of the increasing disparity between the wealthy and the poor; predictable victims, casualties tolerated by the neo-liberal economic development models requiring children to sacrifice their present (through unacceptably high mortality) and their future (through cuts in public expenditure for literacy and education). They are, in the words of a UNICEF report, indicators of the economic adjustment process.

4. Closely connected with the Berlin verdict of the Tribunal, which focused on economic mechanisms, is that of Bogota (1991) on impunity for crimes against humanity, which conducted a series of hearings involving the countries of Latin and Central America. It found that the structural adjustments required by the neo-liberal economic models efface the memory of an unrepentant impunity in favour of the free-market: children again become desaparecidos y olvidados, so as not to be a hindrance to the policies of the World Bank and the IMF.

5. The Tribunal, examining situations of oppression in given countries, as well as the world situation, has lately embellished its sentences with proposals and operative indications. The facts examined this session merited such a contribution. Hence:

THE TRIBUNAL FORMULATES THE FOLLOWING RECOMMENDATIONS:

(a) Facing serious acts such as the abduction of children with the intention of exploiting them through prostitution, production of pornographic material, and organ traffic, and in the light of evidence of children kept in conditions of servitude or slavery, the Tribunal stresses that it is an obligation of States on whose territories such crimes are committed to investigate and identify the offenders, and to apply proportionate punishments. It urges States to prosecute the authors of acts of violence against children, and to ensure that the punishment of offences be brought under the jurisdiction of ordinary tribunals when those implicated belong to the police or armed forces, as was documented in several countries, particularly Brazil;

(b) The Tribunal urges those States which already punish such criminal acts committed within their territory to punish the same acts committed by their nationals in other countries whenever the offenders can be apprehended in their territory;

(c) The Tribunal urges the United Nations General Assembly and other competent international organizations to adopt a convention recognizing the most serious violations of the fundamental rights of children, particularly their abduction and exploitation through prostitution, paedo-pornography, or organ traffic, as crimes against humanity: such an extension would render these crimes subject to the principle of universal criminal jurisdiction;

(d) The Tribunal urges States to observe and implement article 32 of the Convention on the Rights of the Child, regulating children's access to labour, in conditions consistent with the obligations arising from the observance of articles 24 (right to health), 26 (right to social security), 27 (right to an adequate standard of living), 28 and 29 (right to education) and 31 (right to rest and leisure), in such a way as to conciliate labour with education and professional training requirements. The Tribunal recommends that the World Bank, the IMF and other international or regional institutions refrain from financing projects or enterprises employing children in conditions below those provided for by international law and by the relevant national laws;

(e) The Tribunal requests that States ratify multilateral or bilateral agreements intended to prohibit the traffic of children for adoption, and to subordinate the validity of international adoptions to the minimal provisions established by mutual agreement by the States, in application of article 21 of the Convention on the Rights of the Child;

(f) Adhering to the proposal formulated within a project for a convention of the European Council and included in Norwegian and Swedish legislation, the Tribunal urges States which have already adhered to the Convention on the Rights of the Child to adopt a complementary protocol establishing an international ombudsman for the rights of the child to consider charges filed by individuals, associations or NGOs against States, organizations or individuals, and to collect the necessary evidence to verify all forms of violation of this Convention and all the other international instruments applicable to children;

(g) Furthermore, the Tribunal recommends that at as early an age as possible, children be directly represented within the organs making decisions which concern them, and that the democratic virtues which inspire the politics of those countries which have endorsed the Convention be extended to children, at the same time, taking into account that children ought not to be considered mere objects requiring protection, but a subject of rights, and recognizing that they are capable of understanding meaningful relationships. The Tribunal urges educators to consider the child's freedom and responsibility as paramount and urges States and local authorities to renovate cities and urban centres in order to improve their accessibility and safety, and to promote the development of an urban landscape of peaceful coexistence, to facilitate integration between adults and children in order to provide children with an environment conducive to their needs;

(h) The Tribunal urges the Committee on the Rights of the Child, established under article 43 of the Convention, to comply with the provisions of its mandate, and specifically to gather information from non-governmental sources on the living conditions of children, referring to independent experts and performing field investigations in the countries where reports of serious violations of the Convention are filed;

(i) The Tribunal urges the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities to proceed without further delay to a formal inquiry on organ traffic, specifically involving children;

(j) The Tribunal urges the Security Council to exercise its competence, as conferred by Article 26 of the Charter of the United Nations in regulating the arms trade and to restrict the purchase of weapons, which directly threatens the well-being of the population, particularly children, on the grounds of the financial burden it places on the States' budget;

(k) The Tribunal urges the International Court of Justice to assume a competence which so far it has avoided - namely, the assessment of acts and decisions of organs of the United Nations system to verify their conformity with international law: such assessment must be extended both to the Security Council's resolutions and to the decisions of the United Nations financial institutions, which must conform not only to their own statutes, but also to the principles and aims of the Charter, as well as to the rules of international law guaranteeing the protection of fundamental rights;

(l) Presented with precise and detailed information on the current disastrous consequences on families and children of the economic sanctions imposed on Iraq, the Tribunal stresses that such decisions cannot be taken without a rigorous assessment of their lawfulness with respect to the right to life and the health of the populations of the State against which the sanctions are directed;

(m) The Tribunal urges the United Nations to endorse an international convention to integrate the list of prohibited weapons according to the humanitarian law of war, stating a prohibition with respect not only to the use, but also to the manufacture and sale of land-mines, which are by definition non-discriminatory weapons, whose effects persist many years beyond the end of the conflict and whose main victims are children.

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1. The Permanent Peoples' Tribunal, a parent body of The International League for the Rights and Liberation of Peoples is a forum for opinion. It was created for the promotion of the right of self-determination of peoples, and to fill, in the face of historic realities, a lacunae of international law, and to stimulate the creation of substantive law in this field. The Tribunal held a session on "The violation of fundamental rights of children" in Italy from 27 March to 4 April 1995.

2. The status of children is an indicator not only of the economic development, but also the human development of a State. The deteriorating conditions of childhood in some States is often a mirror of the total degradation of the society in which those children live.

3. Childhood is the temporary state of a considerable proportion of mankind and its members are considered a minority, whose needs, wishes and interests are heard only as interpreted by adults. They are subordinates, "objects" of decisions by others who have power over them. There are similarities to the imperial policies towards colonies and their populations, whose people have been (and still are) subject to the decisions of others, and also to the position of women, a gender long excluded from decision-making. Historically, the child, the woman and the colonized have been objects, used and abused by others who treat human beings as an instrument to further their power and predominance.

4. The Tribunal examined many aspects of the child's condition around the world. Drawing upon the expertise of distinguished scholars, and corroborated by extensive data, the verdict issued by the Tribunal contains the following chapters in addition to those highlighted below:

(i) Facts and Crimes. The State of Children and the State of the World;

(ii) Arms Traffic and the Market Economy;

(iii) Violations of the Right of the Child to Development, and the Women's Condition;

(iv) Child Labour;

(v) Violations of the Right to Personal Integrity and to Protection against Sexual Abuses, Prostitution and Pornography. A New Simony;

(vi) International Adoptions. The Child Market;

(vii) Violations of the Prohibition of Capital Punishment or Life Imprisonment of Children;

(viii) Questions concerning the Duty of Ensuring Particular Protection to Children of Minorities;

(ix) Other Violations of the Right to Life and of the Right to Protection against all Kinds of Abuse and Violence;

(x) Monitoring the Application of the Convention on the Rights of the Child;

(xi) Ethical and Political Principles;

(xii) From Morals to Law;

(xiii) The Legal Doctrine of Guilt;

(xiv) Criminal Negligence.

5. The following points are explained in detail:

(a) Violations of the right to life, in a framework of war violence. According to UNICEF, over the last three years 1.5 million children were killed and 5 million were crippled in armed conflicts. According to a recent report, infant mortality in Iraq increased from 63/1,000 to 111/1,000 during 1990-1991, as a result of the second Gulf war and the sanctions imposed by the United Nations. Infant mortality increased from 86/1,000 to 143/1,000. It has been estimated that during this embargo the lack of food and medicines has resulted in the death of almost 170,000 children. In the war between Peru and Ecuador, children have been conscripted into the armed forces, despite the prohibition of the Convention on the Rights of the Child which under article 38 stipulates a minimum age of 15. In internal conflicts, the absence of a recognized authority together with irregular forms of recruitment hinder the application of this rule and the identification of its victims. A particularly worrying crime against children is the use of land-mines, weapons of deferred death, which continue killing children long after the conflict. Worldwide, approximately 100 million land-mines litter more than 64 countries: for every 20 children there is 1 mine;

(b) New causes of violation of the right to life: organ traffic. Medical progress in organ transplantation has rendered children providers of spare parts, a new opportunity for the mutilation and suppression of children. Among the cases presented to the Tribunal's attention are the following:

(i) The charge filed in December 1993 by the police chief in Santa Cruz (Bolivia), who testified that ambulances cruised the suburban neighbourhoods, extracting samples of cerebrospinal fluid from children found on the streets or from poor dwellings;

(ii) A cornea traffic was identified in Bogotá (Colombia). A number of ophthalmic clinics have flourished in the poorest areas, but transplantation surgery takes place only in the richest areas. The direction of this traffic in human body parts is one-way, and to the detriment of the child;

(c) Violations of the prohibition of capital punishment or life imprisonment of children. The Tribunal ascertained that, besides the extremely serious phenomenon of extrajudicial executions, and notwithstanding the principle stated in article 37 of the Convention prohibiting capital punishment and life imprisonment for those under 18 years of age, such punishment is considered admissible by the criminal law of 21 countries, and that 9 countries actually have passed such sentences since 1985. The Tribunal acknowledged cases of capital punishments carried out in Bangladesh, the Islamic Republic of Iran, Iraq, Nigeria, Yemen and the United States. In the United States the frequency of death sentences passed against adolescents exceeds that of any other country.

6. After considering the information brought before it, the Tribunal issued the following judgement:

The Permanent People's Tribunal:

1. Confirms the verdicts already issued in the Berlin (1988) and Madrid (1994) sessions on the policies of the International Monetary Fund and of the World Bank, in regard to their consequences on the living conditions of children in countries undergoing structural adjustment programmes, which generally benefit that country's creditors. Those who make such decisions cannot ignore their consequences, particularly since those producing the most detailed and rigorous evidence are other institutions belonging to the same United Nations system, especially UNDP and UNICEF: in the terms of the Madrid verdict, we are thus witnessing a lethal policy, and one which entails an international responsibility for the institutions mentioned.

2. Extends the same verdict, with the same justifications, to the Government of the Group of Seven industrialized countries (G7), which jointly retain a majority power of decision-making within international financial institutions; a particular influence on the sentence is the fact that the main beneficiaries of the unequal allocation of the world's resources are these very countries and the transnational companies that form the dominant sectors of their economies, and that inequalities both within individual countries and at the international level have progressively increased over the last decade.

3. Condemns the Governments of those countries which have complied with the requirements of international financial institutions, albeit under pressure imposed by their foreign debt, by enacting structural adjustment policies that irreparably violate the fundamental rights of their countries' populations; in practice such policies entail foregoing the adoption of social, health, and educational policies which would favour children, and in many cases necessitate the suspension of existing legislative provisions.

4. Condemns the Governments granting impunity to the authors of acts of violence against children, and particularly those committed publicly; the concept of State responsibility must be applied to acts committed by the armed forces and the police.

5. Condemns the Governments of all those countries which have failed their duty of identifying the authors of serious offences committed on the territory under their jurisdiction, specifically in the field of international adoptions, child labour, prostitution, paedo-pornography, illicit drug traffic, organ traffic, and have moreover abdicated their duty to punish those offences according to the criminal law in force. A failure to prevent these acts is as serious a charge as the crime itself. It moreover condemns the Governments which have recruited children into the armed forces, in open violation of article 38 of the Convention on the Rights of the Child, or have encouraged the illicit involvement of children in domestic armed conflicts.

6. Acknowledging that the majority of the States which have endorsed the Convention on the Rights of the Child - including the five permanent members of the Security Council - have in practice only implemented to a very limited

extent the necessary instruments for the application of the Convention, the Tribunal believes that the situation of three countries in particular, which should have a specific responsibility in so far as they are members of the Security Council and the G7, should be singled out:

- the United States, which has signed, though not yet ratified, the Convention, and which in contravention of article 37 has made no provisions for adapting the Confederate States' legislature and practices with regard to the prohibition of capital punishment of children;

- the United Kingdom, which, in violation of the same article, has adopted even more punitive legislation with respect to remanding unconvicted juveniles to prison custody and to the application of detention or imprisonment for children under 14;

- France, where the Supreme Court has refused to consider the Convention's provisions as directly applicable until the legislature adopts an adequate means of application, which so far has not been done.